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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,560	04/29/2002	Patrick Michael Van Baal	Q67729	8705

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WASHINGTON, DC 20037

EXAMINER
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TRAN, LOUIS B

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/019,560

Applicant(s)

VAN BAAL ET AL.

Examiner

Louis B Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_. 6) ☐ Other:

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 3-5, 11,12 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitation "the front film layer " and "the back film layer" in lines 1 and 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claims 5 and 11 recites the limitation "the means offering resistance" in line 1 of the claim. There is insufficient antecedent basis for this limitation in the claim. It is unclear if this is referring to the previously mentioned restraining means or partitioning means.

Claim 12 recites the limitation "the flow rate and/or the fill pressure are measured" in line 2 and 3. It is unclear what the claim is to encompass and what is required in the claim.

### ***Claim Objections***

3. Claims 1 and 9 are objected to because of the following informalities: Line 9 of claim 1 and line 11 of claim 9, recites the limitation, "predetermined pressure the restraining member". It is assumed applicant intended to state, "predetermined pressure of the restraining member". Correction is required.

### ***Claim Rejections - 35 USC § 102***

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-4, 6, 7, 9, 10 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Olson (6,032,818).

With respect to claim 1, Olson teaches the use of a flexible container made of a film material 1 for containing a fluid substance comprising a fill opening 6 and a partitioning means 45 along which a first container wall part is placed against a second container wall part seen in Figures 6C and 6D, the partitioning means dividing the container in a first and second compartment, characterized in that the partitioning means comprising a restraining member which maintains a substantially fluid tight separation of the first and second

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compartment until a predetermined pressure is achieved in the first compartment, at which predetermined pressure the restraining member is released by the fill pressure for placing the first and second compartment in fluid communication as described in column 5, lines 35-55.

With respect to claim 2, Olson teaches wherein the restraining member comprises two closure lines 20 which extend essentially from the top of the container to the bottom thereof.

With respect to claim 3, Olson teaches wherein the front film layer is joined to the back film layer along the closure lines as seen in Figure 6c.

With respect to claim 4, Olson teaches wherein the container is folded double along closure lines, a first layer of the film material folded double being attached via the restraining means to a second layer of the film material folded double as seen in Figure 6c.

With respect to claim 6, Olson teaches a container characterized in that on either side of a center line of the container two side strips of the container are folded double along fold lines located parallel to the center line as seen in Figure 6d.

With respect to claim 7, Olson teaches a portion of the film material 40 has been displaced from the peripheral edge of the container to the center of the container and is positioned between wall sections located opposite one another, the restraining member 45 connecting said opposite wall sections as seen in Figure 3.

With respect to claim 9, Olson teaches the steps of placing the flexible container in a relatively rigid container 11, the flexible container being provided with a film material 1 for containing a fluid substance comprising a fill opening and a partitioning means along which a first container wall part is placed against a second container wall part, the partitioning means dividing the container in a first and second compartment characterized in that the partitioning means comprises a restraining member which maintains a substantially fluid tight separation of the first and second compartment, seen in Figures 6a-6d, until a predetermined pressure is achieved in the first compartment at which predetermined pressure the restraining member is released by the fill pressure for placing the first and second compartment in fluid communication, filling the first compartment with the fluid substance via a fill opening 6 in the container, releasing the restraining member 45 via the fill pressure such that the second compartment is opened and filling the second compartment until the film material of the flexible container is in contact with the wall of the rigid container.

With respect to claim 10, Olson teaches that air is removed from the flexible container before the flexible container is inserted in the rigid container which is described in column 5, lines 55-60.

With respect to claim 11, Olson teaches the container sections folded double being attached to one another by means offering resistance 45 which are released by the fill pressure seen in Figure 6d.

***Claim Rejections - 35 USC § 103***

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6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olson (6,032,818) in view of Bonerb (5,344,048).

Olson discloses the invention substantially as claimed but does not show the means offering resistance comprising adhesive tape.

However, Bonerb teaches the use of a means offering resistance comprising plastic fasteners 68 for the purpose of releasing portions of a bag in order to provide more volume for filling as in column 6, lines 50-60 as seen in Figure 5. Although adhesive tape is not explicitly described, Bonerb does describe that hook and loop fasteners, rope, draw strings, plastic fasteners and other fastening means well known in the art can be used. Adhesive tape is categorized as a plastic fastener and is also well known in the art for fastening.

Therefore, it would have been obvious to one having ordinary skill in the art to provide Olson with adhesive tape in order to secure portions of a bag during filling and then unfastening to allow for further filling of a bag.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Olson (6,032,818) in view of Sharples (4,955,512).

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Olson discloses the invention substantially as claimed including air being at least partially removed from the container but does not explicitly show a fill opening provided with a shut off valve.

However, Sharples teaches the common use of shut off valves in a fill opening, air being partially removed from the container for the purpose of filling bags under pressure conditions as described in column 2, lines 15-65.

Therefore, it would have been obvious to one having ordinary skill in the art to provide an elastomeric bag with a specific shut off valve arrangement in order to fill bags under pressure.

***Allowable Subject Matter***

9. Claim 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure are Brimson, Nelson, Schick, Watkins, Merrill et al., Kamiyama et al., Nittel, Graves et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis B Tran whose telephone number is 703-305-0611. The examiner can normally be reached on 8AM-6PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax



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phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

lbt  
July 31, 2003

A handwritten signature in black ink, appearing to read 'Rinaldi I. Rada', with a long horizontal line extending to the right.

Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700